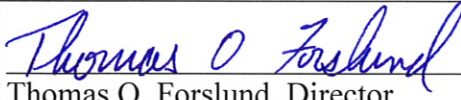


Thomas O. Forslund, Director

Governor Matthew H. Mead

Policy Title:	Enforcement, Sanctions, and Penalties for Privacy and Security Violations
Policy Number:	AS-008 and S-001b
Effective Date:	July 1, 2013
Approval:	<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  Thomas O. Forslund, Director </div> <div style="text-align: center;"> <u>4/18/13</u> Date </div> </div>

Purpose:

This policy establishes enforcement measures, sanctions, penalties, and disciplinary actions that may apply to violations of Wyoming Department of Health (WDH) privacy and security policies and procedures and offers guidelines on how to conform to required privacy and security standards. Penalties for misuse or misappropriation of protected health information include both civil monetary penalties and criminal penalties. Civil penalties range from \$100 to \$1,500,000 per year for identical violations. Criminal penalties vary from \$50,000, one year imprisonment, or both, to \$250,000, ten years imprisonment, or both.

Scope:

This policy applies to all WDH workforce.

Definitions:

WDH Compliance Office designee means an individual responsible for serving as a compliance liaison between the WDH Compliance Office and a division/program/facility.

Individual means the person who is the subject of protected health information.

Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.

Permanent appointment means the appointment of an employee to permanent status upon completion of a probationary period.

Non-permanent employee means an at-will employee who has no expectation of continued employment and who may be dismissed at any time without cause or reason.

Policy:

1. General

- a. WDH shall enforce privacy and security safeguards. Failure to do so, may subject WDH, as a state agency, to administrative penalties by the U.S. Department of Health and Human Services (DHHS), Office for Civil Rights (OCR), including federal funding penalties.

- b. All employees, volunteers, interns, and members of the WDH workforce must guard against improper use or disclosure of protected health information (PHI).
 - i. WDH employees, volunteers, interns, and members of the WDH workforce who are uncertain whether a disclosure is permitted are encouraged to consult with the WDH Compliance Office or a Compliance Office designee. The WDH Compliance Office is a resource for any WDH division/program/facility that cannot resolve a disclosure question and may be consulted as necessary.
- c. All WDH workforce members shall be aware of their responsibilities under WDH privacy and security policies.
 - i. WDH workforce members shall be expected to sign an [F-002: Acknowledgment of Training](#) indicating that they have been informed of WDH's privacy and security policies; that they generally understand that known and willful violations of state and/or federal law for improper use or disclosure of an individual's PHI are subject to criminal investigation, prosecution, or civil monetary penalties; and that they understand their responsibilities to ensure the privacy and security of WDH clients' PHI.
 - ii. WDH workforce members who knowingly and willfully violate state and/or federal law for improper invasions of personal privacy may be subject to:
 - A. Criminal investigation and prosecution, both by the State of Wyoming and by the federal government, depending on the nature of the violation. Federal and state laws provide substantial fines and prison sentences upon conviction, depending on the nature and severity of the violation.
 - B. Civil monetary penalties imposed by DHHS, OCR.
- d. WDH Supervisors are responsible for ensuring that WDH workforce members who have access (i.e., electronic, hard-copy, or verbal) to PHI are informed of their responsibilities to protect the privacy and security of such PHI.
- e. The WDH Compliance Office designee and/or the WDH Division Administrator shall be required to report violations of WDH privacy and security policies and procedures to the WDH Compliance Office.
- f. The WDH Compliance Office must document all efforts to mitigate any harmful effect known to WDH of a use or disclosure of PHI in violation of its policies and procedures by WDH or its business associates.

2. Sanctions

- a. Violations of WDH privacy and security policies and procedures shall be reported to the WDH Compliance Office. Appropriate personnel action shall be determined through examination of the Wyoming State Personnel Rules and collaboration among the Attorney General's Office, the WDH Compliance Office, and the WDH Human Resources Office.
- b. Permanently appointed WDH employees who violate WDH policies and procedures are subject to disciplinary action under *Personnel Rules of the Executive Branch of Wyoming State Government*, Chapter 11, Discipline for Permanent Employees, (September 1, 2009), which may include dismissal from employment.
- c. WDH workforce who are not permanently appointed WDH employees are not entitled to disciplinary measures and may be dismissed at any time for violating WDH privacy and security policies and procedures.
- d. WDH shall, to the extent practicable, mitigate any known harmful effect resulting from a use or disclosure of PHI by WDH or its business associates that violates WDH policies and procedures. Mitigation efforts should be implemented under the guidance and direction of

the WDH Compliance Office. However, any mitigation efforts completed independently of the WDH Compliance Office's involvement shall be reported to the WDH Compliance Office.

3. Retaliation prohibited

- a. Neither WDH, as an entity, nor any WDH workforce member, shall intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against:
 - i. Any individual for exercising any right established under WDH privacy and security policies, including the filing of a complaint with WDH or DHHS.
 - ii. Any individual or other person for:
 - A. Filing a complaint with WDH or DHHS as provided in WDH privacy and/or security policies;
 - B. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing relating to WDH privacy and/or security policies and procedures; or
 - C. Opposing any unlawful act or practice, provided the manner of such opposition is reasonable and does not involve a use or disclosure of an individual's PHI in violation of WDH privacy and security policies and procedures.

Contacts:

Pat Green, WDH HR Administrator, (307) 777-6057

De Anna Greene, CIPP/G, CIPP/IT, WDH Privacy/Compliance Officer, (307) 777-8664

Tate Nuckols, JD, WDH Security Officer, (307) 777-2438

Forms:

[F-2; WDH Acknowledgment of Training](#)

References:

42 U.S.C. §§ 1320d-5 and d-6

45 CFR §§ 160.506-508

45 CFR § 164.308(a)(1)(ii)(C)

45 CFR §§ 164.530(g)(1) and (2)(i)-(iii)

45 CFR §§ 164.502(a) and (i).

45 CFR §§ 164.502(j)(1)(i) and (ii)(A)-(B)

Personnel Rules of the Executive Branch of Wyoming State Government, Appendix A Definitions, (May 29, 2012).

Personnel Rules of the Executive Branch of Wyoming State Government, Chapter 13, Dismissal of Non-Permanent Employees, (February 1, 2006).

Training: